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April 6, 2026

The Honorable Marc C. Lemieux, A.J.S.C.
Superior Court of New Jersey
71 Monument Park
Freehold, New Jersey 07728

Re: State of New Jersey v. Paul Caneiro
Case No. 18-4915
Motion for a New Trial

Dear Judge Lemieux:

POINT I

THE DEFENDANT RECEIVED A FAIR TRIAL BEFORE AN IMPARTIAL JUDGE AND AN UNPREJUDICED JURY

Defendant complains that this Court "denigrated" defense counsel "both in and out of the presence of the jury" such that he was denied a fair trial. Db6. Defendant supports his allegations with citations to instances where, he alleges, the Court engaged in conduct directed at defense counsel that prejudiced the jury. Db6-9. Defendant also points to instances where he claims the Court "sustained its own sua sponte objections against only the defense." Db7. Defendant's allegations are without merit.

A defendant has "an absolute constitutional right to a fair trial before an impartial judge and an unprejudiced jury." State v. Zwillman, 112 N.J Super. 6, 20 (App. Div. 1970). So long as "an atmosphere of impartiality" is maintained a trial court is afforded "wide discretion in

supervising the conduct of a trial." State v. Tilghman, 385 N.J Super. 45, 53-54 (App. Div. 2006) (internal quotations and citations omitted). See Zwillman, 112 N.J. Super. at 20 ("[g]reat latitude is given to a trial judge in the conduct of a trial"). This "long standing tradition[,]" Tilghman, 385 N.J. Super. at 53, was most recently reaffirmed by the Appellate Division in State v. Bitzas: "a trial judge has the ultimate responsibility to control a trial" and is "entrusted with the sound discretion to manage the conduct of a trial in a manner that facilitates the orderly presentation of competent evidence[.]" 451 N.J. Super. 51, 76 (2017).

Along these lines, "[i]t is . . . well established that a trial judge has broad discretion in controlling the scope of cross-examination to test credibility." State v. Sands, 76 N.J. 127, 140 (1978). To this end, N.J.R.E. 611(a) provides, "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence to . . . avoid wasting time." Similarly, trial judges have considerable discretion in determining whether to admit evidence. State v. Feaster, 165 N.J. 1, 82 (1998).

In the present matter, the defendant received a fair trial before an impartial judge and an unprejudiced jury. During the course of the trial, the Court had to rule on numerous objections made by both the State and the defense. In so doing, the Court at times ruled in favor of the defense and at other times in favor of the State. The vast majority of the Court's comments regarding these objections took place at sidebar, outside the hearing of the jury.[1] Neither the Court's conduct at sidebar, nor the Court's conduct or comments in the presence of the jury were prejudicial to the defense. The Court's comments to defense counsel were neither denigrating, nor hostile. Rather, the Court's comments were focused on ensuring that the case was tried in an

[1] White noise was utilized at all sidebars.

expeditious manner, that the jury understood the evidence, and that the Rules of Evidence were followed by the parties.

The State would be remiss if it did not point out that during the course of the trial, defense counsel's lengthy questioning of witnesses was riddled with repetitive questions that had been asked and answered multiple times; questions that were not relevant; questions that called for speculation and/or hearsay; and, in one instance, a blatant discovery violation that arose during the defense's case-in-chief. While the State objected on multiple occasions, there were times when the Court sua sponte sustained objections yet to be made. Such intervention on behalf of the Court was wholly appropriate. See N.J.R.E. 611(a); Sands, 76 N.J. at 140; Feaster, 165 N.J. at 82; Tilghman, 385 N.J Super. at 53-54; Bitzas, 451 N.J. Super. at 76. See also State v. Guido, 40 N.J. 191, 207 (1963) (noting that "[a] trial judge may and indeed in some situations intervene" as "a fair trial is [] [the trial judge's] responsibility and he should assure it notwithstanding that counsel may fail to protest."). The fact that the defense repeatedly chose to step outside the Rules of Evidence to such an extent that the Court was left with no choice but to address same on multiple occasions does not equate to unfair criticism of the defense. All attorneys, including those who represent criminal defendants, must abide by the rules, with which the Court was tasked to enforce. Indeed, "[T]he totality of the trial record speaks for itself in terms of the Court's fair treatment of all parties, including the defendant himself, with whom the Court continuously maintained a respectful rapport both in and outside the presence of the jury.

Nevertheless, in an abundance of caution, this Court instructed the jury on at least two separate occasions that any interactions between the Court and the attorneys should have no impact on the jury's decision. This is significant. In Tilghman, 385 N.J. Super at 59, the trial

court had imposed a time limit on the opening statements of the parties. During his opening statement, defense counsel, in the presence of the jury, asked for more time, to which the Court responded: "give these jurors a break" and "this isn't a filibuster." Ibid. The Appellate Division found that the comments by the trial court, although less than ideal, did not suggest bias or partisanship on part of the judge, but rather appeared to be a reaction to the perceived non-compliance of the defense attorney. Moreover, the Appellate Division noted that in charging the jury at the end of the trial, the trial court instructed the jurors that they were the exclusive finders of fact and that they were not to be swayed by "any comments between the court and counsel." Id. at 61. The Appellate Division stated that the "instructions were clearly given and we assume the jury followed them." Ibid. The Appellate Division was "satisfied that the curative instructions had the desired effect, especially when the totality of the evidence is considered." Ibid. See also State v. Vergilio, 261 N.J. Super. 648, 658 (App. Div. 1993) (defense argued that the trial judge's smiling during the State's cross examination of the defendant's alibi witness expressed his disbelief of the witness's testimony: however, the Appellate Division found that while no immediate cautionary instruction was given, the judge's final charge made it clear that the jurors were the ultimate finders of fact and credibility of the witnesses); State v. O'Connor, 42 N.J. 502, 510-511 (1964) (denial of defendant's motion for a mistrial on grounds that the trial judge was severe in his questioning of the defendant and allegedly made facial expressions of "disgust, amusement, and disbelief of defendant, annoyance and temper" was proper based on the "whole record of the case" and given the trial court's cautionary instruction to the jury.).

While none of the Court's conduct in the present case prejudiced the jury, this Court nonetheless gave similar cautionary instructions. On January 23, 2026, subsequent to defense counsel's sidebar request for the Court to be more patient with her, the Court gave a lengthy

instruction to the jury advising the jurors that part of the Court's function is to rule on objections, instructing that "any interaction . . . between the attorneys and the Court should have no impact on you one way or another." The Court cautioned that "even if I may sustain an objection and do it in a certain way, I need you to understand that that cannot impact one side or another and it is not an indication of how I feel about this case." The Court further instructed the jury that the facts and credibility of the witnesses are solely for them to decide and that such decisions should not be based on anything other than the evidence.[2]

On February 12, 2026, during the final jury charge, the Court once again reiterated that any rulings on objections should not be taken as the Court's opinion on the merits of the case; that the Court's rulings should not be taken as favoring one side over the other; and that each of the Court's rulings was decided on its own merits. The Court addressed the fact that although there were numerous sidebars, such procedures are normal and proper, and that the subject matter of same should not be speculated upon. The Court further instructed the jury that they must not consider or evaluate any communications that took place between the Court and the attorneys; that any such dialogue that did occur between the Court and counsel should not be taken as an indication as to how the Court views the attorneys, the facts of the case, the credibility of the witnesses, or the guilt or innocence of the defendant.[3]

In sum, the totality of the trial record in the instant matter reveals that the conduct and comments of this Court did not have the purpose of denigrating defense counsel, nor the effect of prejudicing the jury. The Court maintained "an atmosphere of impartiality[,]" Tilghman, 385 N.J Super. at 53-54, throughout the course of the trial. Notwithstanding, any perceived notions of

[2] Court Smart Trial Day 8 – 1/23/26 – PM (2) 28:00 to 29:31
[3] Court Smart Trial Day 19 – 2/12/26 – PM 22:42 to 25:57

impartiality were cured by the Court's multiple thorough cautionary instructions to the jury. As such, the defendant was tried before an impartial Court and an unprejudiced jury, and thus, received a fair trial.

POINT II

THE STATE'S SUMMATION WAS PROPERLY BASED ON THE EVIDENCE ADDUCED AT TRIAL AND FAIR COMMENTS THEREFROM

The State submits that none of the alleged instances of "prosecutorial misconduct" in summation were actually improper, particularly in light of the totality of the evidence and fair comments responsive to defendant's closing and in keeping with the overwhelming evidence adduced at trial. Admittedly, a prosecutor is not permitted to "cast unjustified aspersions on the defense or defense counsel," "make inaccurate legal or factual assertions," vouch for the credibility of a witness, or advise the jury to "send a message" to the community. State v. Frost, 158 N.J. 76, 84-86 (1999); State v. Smith, 167 N.J. 158, 177-78 (2001); State v. Acker, 265 N.J. Super. 351, 356-57 (App. Div.), certif. denied, 134 N.J. 485 (1993); State v. Hawk, 327 N.J. Super. 276, 283 (App. Div. 2000). A prosecutor is, however, "expected to make vigorous and forceful" argument to the jury. Frost, 158 N.J. at 82; Smith, 167 N.J. at 177; State v. Harris, 141 N.J. 525, 559 (1999).

In fact, prosecutors "are afforded considerable leeway in making ... summations." State v. Echols, 199 N.J. 344, 360-61 (2009); Frost, 158 N.J. at 82; Smith, 167 N.J. at 177. This is so because,

> [c]riminal trials are emotionally charged proceedings. A prosecutor is not expected to conduct himself in a manner appropriate to a lecture hall. He is entitled to be forceful and graphic in his summation to the jury, so long as he confines himself to fair comments on the evidence presented.

Frost, 158 N.J. at 83 (quoting State v. DiPaglia, 64 N.J. 288, 305 (1974)(Clifford, J., dissenting)); State v. McNeil-Thomas, 238 N.J. 256, 275 (2019); see also State v. Ramseur, 106 N.J. 307, 322 (1987), cert. denied, 508 U.S. 947 (1993)(quoting State v. Bucanis, 26 N.J. 45, 56 (1958), cert. denied, 357 U.S. 910 (1958))("criminal trials [often] create a 'charged atmosphere ... [that] frequently makes it arduous for the prosecuting attorney to stay within the orbit of strict propriety'").

Our Supreme Court has "acknowledged that if a prosecutor's arguments are based on the facts of the case and reasonable inferences therefrom, what is said in discussing them, 'by way of comment, denunciation or appeal, will afford no ground for reversal.'" Smith, 167 N.J. at 178 (quoting State v. Johnson, 31 N.J. 489, 510 (1960)); Echols, 199 N.J. at 360; State v. Pressley, 232 N.J. 587, 593 (2018) It is quite simply "not improper for the prosecution to suggest that the defense's presentation was imbalanced and incomplete." State v. Patterson, 435 N.J. Super. 498, 508 (App. Div. 2014).

Even where a prosecutorial remark is improper, such impropriety will be deemed harmless where it is fairly responsive to a statement made by the defense; a prosecutor is accorded greater than normal latitude to rebut defense summation. State v. C.H., 264 N.J. Super. 112, 134-35 (App. Div.), certif. denied, 134 N.J. 479 (1993); State v. Williams, 317 N.J. Super. 149, 158 (App. Div.), certif. denied, 157 N.J. 647 (1998). "Not every instance of misconduct in a prosecutor's summation will require a reversal of a conviction. There must be a palpable impact." State v. Roach, 146 N.J. 208, 219 (1996). "[T]o justify reversal, the prosecutor's conduct must have been clearly and unmistakably improper and so egregious as to deprive defendant of a fair trial." Patterson, 435 N.J. Super. at 508 (citation omitted); Ramseur, 106 N.J. at 322; McNeil-Thomas, 238 N.J. at 276.

In making this determination, a court "must take into account the tenor of the trial and the degree of responsiveness of both counsel and the court to improprieties when they occurred." Frost, 158 N.J. at 83. Factors relevant to these considerations include: "(1) whether defense counsel made timely and proper objections to the improper remarks; (2) whether the remarks were withdrawn promptly; and (3) whether the court ordered the remarks stricken from the record and instructed the jury to disregard them." Ibid.; Ramseur, 106 N.J. at 322-23. "Whether ... a comment by counsel is prejudicial and whether a prejudicial remark can be neutralized through a curative instruction or undermines the fairness of a trial are matters 'peculiarly' within the competence of the trial judge." State v. Yough, 208 N.J. 385, 397 (2011).

This Court should not accede to defendant's request to grant him a new trial based upon his allegation of prosecutorial misconduct in summation. In light of defense counsel's summation, and viewed within the context of the State's summation as a whole, the complained of summation comments are more properly viewed as nothing more than the "rhetorical excess" that "invariably attend[s] litigation." State v. Williams, 113 N.J. 393, 456 (1988). Coupled with Your Honor's final charge instructions to the jury that summations are not evidential, the State submits that the grant of a new trial is wholly unwarranted here.

The State submits that, when viewed in the context of the entirety of both summations, the comments only now objected to by defendant do not have the pejorative connotations argued by defendant. Comments by the State, which are pointed out narrowly and criticized largely without the benefit of context were often simply responsive to arguments made by the defense during opening statements, cross-examination and in summation.

It should also be noted that the jury was instructed by the trial court that opening statements and summations of counsel are not evidence and must not be treated as evidence.

This jury paid significant attention throughout and always followed instructions; therefore, "[w]e will presume that the jury adhered to the court's instruction." State v. Feaster, 156 N.J. 1, 65 (1998). There is simply no reason to depart from that presumption here.

Ultimately, defendant has not and cannot on this record demonstrate that the fleeting comments he now objects, even if constituting misconduct, constitute error resulting in a unfair trial. Defendant's conviction came following a lengthy trial in which the State presented approximately 40 witnesses and the defense presented both expert and lay witness testimony. Arguments by both sides in summation were extensive; the jury was attentive to counsel and, at all times, to the Court. The jury considered the evidence adduced at trial and returned a verdict in a relatively short period of time. Any error, if error there be, should be deemed harmless and unworthy of the grant of a new trial.

i. THE STATE NEVER SHIFTED THE BURDEN OF PROOF TO THE DEFENSE AND ALSO DID NOT COMMENT ON FACTS NOT IN EVIDENCE

Defendant points out that the burden of proof rests and remains with the prosecution. The State, obviously, agrees with this foundational principle. The jury heard this early and often; from the Court many times, from the defense and from the State, itself. Defendant argues that there were numerous occasions in summation where the State shifted the burden to the defense and that it asserted speculative, prejudicial and/or speculative 'facts' not in evidence. Db12. The State submits that these instances were, in fact, fair comment based on evidence adduced at trial and/or by way of comment about what the jury did not hear at trial. If the totality of the State's summation was "prejudicial," it was not because it was improper, but simply because the evidence overwhelmingly proved that defendant murdered the four victims, set fire to two homes and then

tried to cover it up. Given that defendant makes numerous allegations, the State will address and provide the yet-to-be provided context to each, in turn.

THE DVR CAMERAS

As the Court is aware, during the course of trial, the jury saw video from defendant's DVR showing him entering his garage from inside the home and approaching the area where the DVR (and a camera above it) was located. At the end of the video, at approximately 1:28 a.m., the camera deactivated. As the Court will also recall, there was testimony and body-worn camera footage which focused on what the defendant said to law enforcement about the DVR and these cameras. As defendant points out in his brief, the defense suggested that the cameras were shut off due to Wi-Fi issues, along with issues that defendant was having with "stuff in the garage." Db12. Obviously, the State argued that these were hardwired cameras and that power to the system was supplied by a box above the DVR. A photograph, S-418, was shown to demonstrate this fact. Defendant acknowledges that the State was well within its right to argue that the defendant shut off his cameras. He now argues, after not having objected to the State's comments in summation, that there was "no expert testimony presented by the State to that effect." Db12.

The State submits that the video clearly depicted defendant shutting off his cameras at 1:28 a.m. on the date in question. There was also testimony from Captain Brian Weisbrot that, when the DVR was first accessed, it revealed that the footage ran continuously, uninterrupted, since October 15, 2018. This fact, in conjunction with the video itself, provided sufficient evidence to support the rational inference that this was not a Wi-Fi issue and that it was an intentional act. No expert testimony was necessary because this inference was obvious and clear, based upon testimony in the trial; the Wi-Fi was only necessary to remotely access camera footage on the DVR's phone application. This simply is not "beyond the ken of the average juror" and clearly does not require

expert testimony under N.J.R.E. 702. See Buinno, Weissbard & Zegas, 2026 N.J. Rules of Evidence, Comment 1.1 to N.J.R.E. 701 (Gann 2026); see also State v. Kelly, 97 N.J. 178, 208 (1984).

Defense then argues that the State compounded this error and prejudiced him further by arguing that he failed to provide an explanation for the cameras having been shut off. Defendant cites to State v. Engel, 249 N.J. Super. 336, 381 (App. Div. 1991) for the proposition that the "Supreme Court has repeatedly criticized prosecutorial derelictions of this kind, noting that it is improper for a prosecutor to remark that the defense has offered 'no explanation.'" This, however, is disingenuous and contradictory given that the defense, in the preceding paragraph, noted that they "suggested that the cameras were shut off due to the Wi-Fi issues, along with, issues that the defendant was having with 'stuff in the garage.'" How, then, could the State be improperly stating that the defense offered no explanation when they, by their own admission, had offered an explanation – one that the State simply disagreed was supported by the totality of the facts and reasonable inferences that could be drawn therefrom? New Jersey law clearly permits the State to comment on arguments made by the defense in summation without fear of the grant of a new trial due to such responsive commentary.

In context with defendant's own arguments, the State's argument noted that it simply was not a coincidence that defendant shut off the cameras three minutes before shutting off the Wi-Fi cameras in his basement, despite defendant telling police that he had not been down there since 4 p.m. on the prior day. It was also not a coincidence that the cameras all shut off approximately 37 minutes before defendant left his home in his Porsche Macan in the middle of the night. Therefore, by arguing "there is no explanation for shutting [his cameras] off" and "if there is another explanation for what happened there, I have no idea what it is," the State was simply pointing out

that the defense explanation provided by way of cross examination and argument in summation failed to account for all evidence and the reasonable inferences that could be drawn from this evidence. See Db13.

The use of a rhetorical question simply pointed out that the explanation was unsupported by the evidence. To that end, while not highlighted in the defense brief, defendant does at least note what the State said just before offering that "if there is another explanation, I have no idea what it is." The State was explaining what the testimony, his statements and the video showed (i.e., the evidence) when the State offered, "[h]e's gone to the garage in the middle of the night when he's told police he's sleeping; and he walked up, faces the camera, and all of a sudden it shuts off." The State submits that this is exactly what happened; but, if the jury believed that the defense counsel's explanation made sense, they could have accepted that, based upon the evidence. It seems clear that the jury, utilizing the evidence, including the video from the DVR, chose to reject Paul Caneiro's multiple contradictory statements about his cameras and their functionality and chose to accept that the camera all of a sudden shutting off was, simply, an intentional act.

COREY CANEIRO

Defendant raised a third-party guilt defense at trial. The defense attempted to show that Corey Caneiro had a motive to kill Keith Caneiro and family in order to inherit either $1.5 or $3 million in life insurance. The defense argues, correctly, that "[c]ertain witnesses were able to confirm that Corey had knowledge of the trust based on communications that he had with Keith about it." They also correctly note that, "none of these witnesses testified – one way or another – whether Corey had knowledge that he was a beneficiary." Db13-14. The defendant now seeks to argue to this Court that the State improperly argued that "Corey had no idea" and that Corey

"didn't even know about" the fact that he was a [contingent] beneficiary." Not surprisingly, these quotes along with many others in the defendant's brief, are pulled out of context.

One need only look to video/audio from trial where the State, in making this responsive argument, pointed out, in sum and substance, that you never heard any testimony that Corey Caneiro knew he was a contingent beneficiary. The State further argued and emphasized that he was a contingent beneficiary, meaning that Jennifer, Jesse and Sophia would all have to be deceased before either Paul or Corey would receive anything. State's witness Lazaro Cardenas, Esquire, testified that the intent of the trust was to benefit the children and was not designed to benefit Paul or Corey. Again, the testimony and argument by the State in summation highlighted the absence of evidence establishing that Corey Caneiro knew that he could benefit if Keith and his family were all murdered.

This was further supported by testimony that the Trust was created in 1999 and that Paul Caneiro signed the Trust given his role as Trustee. The State argued reasonable inferences regarding this Trust and Corey's potential knowledge – simply stating what the evidence showed; that it was not designed to benefit Corey and that it was plausible to believe that Keith or Paul would have no reason to tell Corey that he stood to gain if Keith died, Jennifer died, Jesse died and Sophia died, given how implausible that scenario was.

The State would also note that the State's focus in summation surrounding the topic of Corey Caneiro was simple – the State followed the evidence and the evidence led to Paul Caneiro and not to Corey Caneiro. For this, the State relied on the testimony of Lt. Patrick Petruzziello, who in response to, defense cross-examination, stated, "we followed the evidence." To this end, the State indicated while discussing the lack of evidence suggesting Corey Caneiro should have been a suspect, "there's nothing there." This was objected to because the defense believed that the

State was referencing Elisa Caneiro's phone when, in fact, the State's theme was that, in totality, there was simply "nothing there" in the totality of the evidence to indicate that Corey Caneiro had anything to do with these murders and arsons. See Db14.

As stated above, regarding Corey Caneiro's knowledge of his status as a contingent beneficiary, the State was clear on several occasions that "you never heard" or "you've heard nothing" establishing that Corey Caneiro knew he was a contingent beneficiary. This was absolutely true. There was no testimony either way, but the jury certainly never heard that he knew. Presumably, in the same fashion, this absence of evidence allowed the defense to have argued that the jury heard no testimony that he did not know. See Defense PowerPoint Slide 99, "[w]ho did we not hear from?" The defense further argues that the State's remarks that he "didn't know" or "doesn't know" were improper. The State disagrees, in light of, both the fact that the jury never heard that Corey had that knowledge and the reasonable inferences that could be drawn from the evidence -- essentially that there was no reason for him to know.

Finally, in this context, defendant has argued that the State's comments regarding Corey Caneiro amounted to burden shifting. This is simply unsupported. The State noted it had the burden to prove the defendant's guilt beyond a reasonable doubt. See Day 18 at 5:41:10. The State never said the defense had to prove Corey Caneiro committed these crimes. The Court further charged the jury on third-party guilt which indicated that:

> The defendant contends that there is evidence before you indicating that someone other than he or she may have committed the crime or crimes, and that evidence raises a reasonable doubt with respect to the defendant's guilt.
>
> In this regard, I charge you that a defendant in a criminal case has the right to rely on any evidence produced at trial that has a rational tendency to raise a reasonable doubt with respect to his own guilt.

> I have previously charged you with regard to the State's burden of proof, which never shifts to the defendant. The defendant does not have to produce evidence that proves the guilt of another, but may rely on evidence that creates reasonable doubt. In other words, there is no requirement that this evidence proves or even raises a strong probability that someone other than the defendant committed the crimes. You must decide whether the State has proven the defendant's guilt beyond a reasonable doubt, not whether the other person or persons may have committed the crimes.

The State never indicated that the defense had any burden to prove that Corey Caneiro or anyone else committed these crimes. The State, however, was faced with significant arguments and cross-examination regarding Corey Caneiro and was legally permitted to respond to this by highlighting the absence of evidence regarding Corey Caneiro's involvement. The State acknowledged the potential for a motive for Corey given his control of the Trust after-the-fact, a fact which was brought up by the defense by way of Paul Caneiro signing over his Trustee status to Corey Caneiro after he was incarcerated (via Susan Caneiro as Power of Attorney). By doing this, the State noted that this showed his knowledge after-the-fact, but highlighted that the jury had never heard any evidence that he knew about his contingent beneficiary status prior to these murders.

As indicated above, this jury was charged on third-party guilt and each juror had a copy of the charge with them for their reference during deliberations. Clearly, this jury took little stock in the argument that Corey Caneiro was involved in these crimes; they clearly and correctly determined that the evidence overwhelmingly pointed to Paul Caneiro.

Lastly, by way of details about Corey Caneiro, the State pointed out things that the jury actually heard about Corey Caneiro:

- "You heard he was a brother..."
- "He's the youngest brother…"

- "You heard he was bald…"

The State submits that this last fact was indisputable evidence that Corey Caneiro did not kill his brother, sister-in-law, niece and nephew. As this Court knows, video from the "Garage North" Wyze camera depicted the killer outside of 15 Willow Brook prior to the power being disabled and contained noises consistent with the forcible dismantling of the electrical panel affixed to the west side of the home, which were consistent with the video feed being lost. The State submits that the video clearly depicted an individual with hair and wearing dark gloves. As the State argued multiple times in summation, the defendant's guilt was clear - not because of any one fact, but based upon the many different pieces of evidence produced at trial. To this end, black nitrile gloves found at defendant's home revealed the presence of both defendant's and Sophia Caneiro's DNA. Moreover, Corey's baldness, as contrasted with Paul Caneiro's head of hair, clearly made the footage from the referenced Wyze camera relevant to prove Paul's guilt and Corey's innocence.

That being said, though, the guilt of Paul Caneiro was established by more than any one piece of evidence; his guilt was established by following the evidence including the DNA, him shutting off cameras, the uncontroverted ballistic matches, his possession of the barrel, the gun in his locked basement locker, his car leaving his home at 2:07 a.m. and his car returning at 4:08 a.m., all while he was allegedly "asleep." In the face of a third-party guilt defense proffered that focused on Corey, the State submits that it appropriately argued that there simply was no evidence that Corey Caneiro committed these crimes. His lack of knowledge regarding a potential life insurance payout is nothing more or less than legally-permissible fair comment necessary to rebut arguments made by the defense.

The defense argued in its brief that the State mischaracterized the defense when it argued that "it's a pretty farfetched argument to make that we should have accused Corey Caneiro of murder because he stood to gain $1.5 million that he didn't even know about." The defense now says that it "never argued that Corey Caneiro 'should have been accused of murder' but rather that Corey Caneiro should have been investigated because of his similar motive and other evidence." Db15. The State finds this argument to be largely disingenuous. While the defense may have couched certain attempts to elicit hearsay by way of a "failure to investigate" Corey Caneiro argument, the reality is they were arguing that Corey Caneiro did this. And, to this end, as stated above, this jury was charged on third-party guilt; therefore, the State had no choice but to deal with the theory that Corey Caneiro "should have been investigated" and that this created reasonable doubt as to the defendant's guilt.

Lastly, the State would note that in the "Corey Caneiro" section of the defense brief, they point to seven bullet points relating to the State addressing Corey Caneiro and the third-party guilt jury charge. They defense objected only twice. The first objection was to the State's "there's nothing there" comment. Although the Court overruled the objection, the State still offered to clarify the statement to ensure the jury understood it was not talking about Elisa Caneiro's phone. The State then explained the thought that it had been trying to finish: "ladies and gentleman, what I was trying to say was that there was nothing there that made Corey Caneiro look like a suspect…"

The second objection came to the State's argument that, "They brought up Corey, right? They want to talk about Corey. What's Corey look like? We'll talk about why that's important later. I shouldn't have to prove that to you, ladies and gentleman. He has nothing to do with this. Nothing." As stated, the defense objected. The Court inquired as to the basis of the objection. The defense stated, "[h]e's testifying." The Court overruled the objection, stating "it's definitely

not an objectionable thing." Clearly, there was nothing improper about the State arguing to the jury that there was no evidence that Corey Caneiro had anything to do with this – in fact, the State had the burden of proving defendant's guilt beyond a reasonable doubt. This burden required the State to ensure the jury understood that Corey Caneiro was not the killer, particularly because of the language in the agreed-upon jury charge that "[t]he defendant contends that there is evidence before you indicating that someone other than he or she may have committed the crime or crimes and that evidence raises a reasonable doubt with respect to the defendant's guilt." See Model Jury Charge, "Third Party Guilt Jury Charge" (approved 3/19/15). The State would have been derelict had it not spent time rebutting arguments made by the defense in their opening statement, cross-examinations and summation. No New Jersey law cited to by defendant or existent in our precedent requires such dereliction by the State.

Lastly, the State would point out that the Court made clear to the jury that what attorneys say in openings and in summation is not evidence.

JENNIFER CANEIRO'S PHONE

Defendant argues that it raised an important issue about Jennifer Caneiro's phone having never been found at the murder/arson scene and that the location of that phone could have been determined through its recovery and/or other means, i.e. phone records. The State sought to respond to this point in its summation as it is legally permitted to do. The defense highlights a small portion of the State's response to this on page 17 of its brief. The State would note that this highlighted portion was actually part of a larger argument about what was going on inside that house during the time when Jennifer and her kids were murdered. In this context, the State highlighted that when the power to the home was cut at approximately 3:00 a.m., Keith Caneiro, who was likely sleeping, got out of bed and went to check the electric panel and generator switch

in the basement. The State argued, in sum and substance, that Jennifer had to have been awoken at some point to either Keith getting up, the lack of power and/or a commotion, potentially from gunshots. The State submits that this line of argument was wholly proper and clearly fair comment based upon circumstantial evidence and the reasonable inferences that could be drawn therefrom. It should also be noted, again, that there was no objection.

That being said, the defense argues the following was improper:

> "What was Jennifer Caneiro doing? What was she responding to? Her husband had left the bed, right? He went to investigate why the power's out… This isn't a robbery. No one took Jennifer Caneiro's phone. Could they have looked for it? For sure. For sure. If they looked back now, they would have gone up to the master bedroom and they probably would have found it. Could they have gotten phone records? Sure, but you can't search something you don't have."

The defense argues this was problematic for three reasons. First, it includes facts that were not in evidence. This argument ignores the fact that this was fair comment based upon the evidence and reasonable inferences described above. While omitted from the defense brief, there is further context to this portion of the State's argument. The State was describing the overall state of what was going on in that house as Jennifer, Jesse and Sophia were being viciously murdered. The State begins (around 7:11 of Day 18) by saying "presumably she woke up." It further argued, "maybe she gets out to look for him, maybe not… maybe she hears gunshots and then goes to get him…" These facts are simply reasonable inferences from the evidence – Keith was likely asleep at 3:00 a.m.; but it's a fact that he did get up because he texted Paul about the power outage (3:14 to 3:18 a.m.) and he went outside (he said he was going out to check the generator in the 3:18 text message to Paul and he was found dead on the front lawn).

The defendant's second argument complains about the State's comments that no one took her phone and that it would likely have been found in the master bedroom are, again, misplaced as

these are reasonable inferences from the evidence and fair comment. This was further supported by comments made by the State between the ellipsis in the above quoted portion of the State's summation (… this isn't a robbery) when the State actually explained how this was not a robbery because of the way Keith Caneiro was found -- with his wallet in his pocket and his phone next to him on the ground. It was only then that the State said. "This isn't a robbery." See Day 18, 7:12.

The Court will also recall that the defense showed pictures of the master bedroom at 15 Willow Brook, specifically showing Tiffany jewelry boxes within the debris on the floor. They did this to try and show that someone, likely Corey Caneiro, was in the bedroom taking jewelry from the safe after-the-fact. During this line of questioning and in line with the photo(s), one can see that the master bedroom was not "dug out" because it was not anywhere near the area of fire origin. With that in mind, the State offered the argument that the phone could easily have been left in the bedroom when Jennifer left to investigate whatever she heard coming from either downstairs and/or outside. Like the jewelry, which ended up on the floor likely due to firefighting efforts, an argument can reasonably be made that she would not have taken her phone downstairs and that it ended up within all of the fire debris. It is absolutely a reasonable argument based upon the evidence.

Third, the defense insists that the argument, "Could they have gotten phone records? Sure, but you can't search something you don't have" was prejudicial and misleading because you do not need the physical phone to subpoena phone records from a phone carrier. First, and least important, although the defense subpoenaed Corey Caneiro's phone records, the State cannot obtain them that way in light of the Fourth Amendment. See State v. Lunsford, 226 N.J. 129 (2016); State v. Manning, 240 N.J. 308 (2020). Presumably, the defense would have wanted the State to obtain location information within those phone records; this would require a

Communications Data Warrant signed by a Judge after a finding of probable cause. That being said, however, all the State said was a) we could have gotten phone records, but did not and b) we could not search the phone because we did not have it. Both statements are true. The overall argument is fair comment based upon the evidence.

ii. THE STATE'S COMMENTS WERE NOT IMPROPER, WERE NOT PERSONAL OPINION, NOR BEYOND THE TRIAL RECORD

The defense begins this section by arguing that a comment the State made about Keith Caneiro's dinner with Ben Paolucci was improper. The defense cites the following from the State's summation:

> You heard about that right? They had dinner that night and [the defense] were saying that [Ben] didn't say anything bad about Paul – but there's certain things that we can't elicit from witnesses that's actually admissible."

The defense objected and the State did, in fact, comment, "it's true." See Db18. Your Honor sustained the objection and told the jury to disregard the comment. The State has not doubt that this jury respected the Court's order. See State v. Herbert, 457 N.J. Super. 490, 503 (App. Div. 2019). The State respects the Court's ruling, which was correct. That being said, however, it is worth explanation that the State was responding to what the defense said in summation about the interaction between Keith Caneiro and Ben Paolucci on Saturday, November 17, 2018 at Ben's house and then at the 618 restaurant in Freehold. During summation, the defense argued something to the effect of that nothing bad was said about Paul during dinner when, in his statement, Ben actually indicated that Keith was complaining about "still paying Paul and Paul's daughter was driving around in a Porsche;" and, how "Jennifer mentioned about 6 months ago that Keith was very upset with Paul and that Paul had taken approximately $50, 000.00 from their

account. Keith also mentioned on the phone once don't even get me started, don't go into business with your brother or family."

Obviously, information like this was not elicited during Ben's testimony because the State knew it was hearsay; however, the defense seemed to indicate in closing that because Ben had not testified to certain things, that Keith was not complaining about his brother, which was incorrect. That being said, after the Court sustained the objection, the State clarified that Ben and Keith were applying for jobs at Ben's house and then went to dinner at 618 in Freehold. The State further clarified what Ben actually testified to – and that the State asked him, not about what the conversation was, but whether based upon the conversation he gave Keith any advice? The State reminded the jury that Ben testified that he told Keith "to stop worrying about Paul and start worrying about yourself and your money, your family." Day 18 at 6:50:54-6:52:06. Having said all that, the State felt the need to correct what it felt was a misstatement of Ben Palicki's testimony; the Court sustained the objection and told the jury to disregard the State's comment. Therefore, despite the State believing that it needed to correct the record, the Court ruled correctly and the testimony was disregarded. Thus, there is no prejudice.

The defense next argues that the State advised the jury of its own personal opinion on several occasions. First, they complained that the State, in discussing how the "perpetrator" of these crimes would need to switch out the gun barrel, advised that, "I don't – I don't own a gun, so, I've heard how you do it." It is being argued that by arguing that the State (Mr. Decker) as "a member of law enforcement" does not even know how to do this – improperly compared the prosecutor's heightened knowledge of guns against that of Paul Caneiro. Db19. But, contrary to the argument being posited, the State discussed how it was not difficult. Day 19 at 1:52:14. The State certainly was not arguing that it possessed a heightened knowledge of guns (the prosecutor

said I did not own one) and was only trying to make the analogy that Paul Caneiro, as an owner of several guns, would have known how to do it. It should also be noted that SFC Chris Clayton, who qualified as an expert in Ballistics, actually testified that it was "not complicated." Day 19 at 1:52:01.

Defendant also make an additional argument regarding this same topic – that informing the jury that an "esteemed and well-respected agent of law enforcement and representative of the State of New Jersey" does not own a single gun was extremely prejudicial because it undermined the Court's charge regarding the weapons cache. This is simply untrue given the fact that the State actually said to the jury that we weren't using the evidence of all the guns for any purpose other than to show ability to carry out the crimes, means and opportunity. The State's argument did nothing but reiterate what the "Limiting Instruction – Certain evidence" stated with respect to defendant's gun ownership. There was nothing improper in the State's personal reference in the context of switching out the barrel; in context, the State was simply talking about the things that someone would have needed to do in order to frame the defendant. The State submits that it did nothing to prejudice the defendant any further than the facts and evidence did, particularly in light of SFC Clayton's testimony that it was "not complicated."

The defendant also complains that the State referred to the murder weapon, the Sig Sauer, serial number ending in 959, as "a beast," while displaying it for the jury. The State simply submits that it was a descriptive phrase for a handgun that was proven to have taken two lives on November 20, 2018 in Colts Neck, New Jersey.

Defendant next complains about the State's comments regarding the solar panel being left undisturbed, contrary to the electrical panel and generator. The State's point was that some of these solar panel arrays provide backup power. This one did not. This was explained by expert

witness Michael Abraham of the ATF. Furthering that point, a relatively minor one, the State once again indicated that there was testimony that Paul Caneiro did a lot of work around his brother's house and that he helped design and install many complicated features of the home. Therefore, it was fair comment and a reasonable inference from the evidence that someone like Paul Caneiro may not be concerned with disabling power to the solar panel that was not going to provide electrical power to the home once the electrical panel and generator were disabled.

The next criticism of the State's summation is regarding argument about the distance from Keith's house to the location of the parked Macan "outside of Keith property lines." The defense points out that it asked numerous witnesses if the distance was measured and all indicated that it was not. The defense also showed multiple photos depicting the property of 15 Willow Brook, all of which made abundantly clear to the jury what that distance was, despite no one providing any sort of numerical value, distance, etc. The State would simply assert that the distance was obvious to anyone who viewed those photos, including all of the jurors. The jury actually saw this again in the defense's summation. PowerPoint slide 70. That it was simply was not that far away from the house was something the jury itself could judge from photos in evidence and, thus, was fairly commented-on by the State. The defense is simply now trying to create an issue after harping on a timeline that it felt failed. That approximate 6 minute window that Paul Caneiro had to exit the home, run or even walk across the west side of the property, enter his car and drive an extremely short distance to the camera view of 85 Willow Brook, was simply more than enough time. The need for the State to simply try and draw an analogy for the jurors regarding that distance was a wholly fair attempt to try and put some context to an obvious fact. Clearly the jury understood and agreed that there was ample time for Paul Caneiro to cut the Verizon Fios line, light the fire and get back to his car in time to be captured on the 85 Willow Brook camera at 3:48 a.m.

Defendant next argues that the State offered improper, inflammatory "opinion" about how Sophia's blood ended up in the kitchen of 15 Willow Brook (see Db22 for full text). In support of this argument, defense counsel argues that Detective Cordoma, the State's Blood Pattern Analysis expert, "could not draw any additional conclusions about what occurred in the kitchen," pointing out that Detective Cordoma indicated that he could not draw any other conclusions about "movements, directions, things that happened in a certain order, or how many people were present?" This is entirely true; however, the defense is simply missing the point of what the State argued and how it argued it. While Det. Cordoma could not say anything about movement, directions, etc., this is because he did not have the benefit of the DNA results when he conducted the analysis and wrote his report. The State did not ask him about whose blood was found where because that role was not his. But, the State did have other witnesses testify to other relevant information which allowed it to argue what it argued. For instance, testimony from another expert explained the results of the DNA analysis of the swabs taken in the kitchen. This fact, in conjunction with the testimony of firefighter Carmello Lamarca, indicated that Sophia was found dead on the landing between the first and second floors. Therefore, as the State argued, Sophia was bleeding in the kitchen but somehow left the kitchen only to ultimately pass away on the landing. The comments of the State accounted for all of this testimony and was fair comment regarding what was most likely going on inside the home when Jennifer, Jesse and Sophia were being killed. To this end, the State even specifically said, "… you can tie this in with the DNA results," clearly indicating that the state was using multiple pieces of evidence and testimony to paint the picture of what was occurring inside that home. See Day 18 at 7:09:15. This is entirely proper and fair comment based upon this evidence.

And, to argue that the State was overly dramatic is simply unsupported by the tenor and tone of the State's summation and completely ignores the fact that the State barely touched upon many facts/pictures/evidence that could have been characterized as extremely prejudicial. While the State evoked the reasonable inference that Sophia was trying to help her brother and stated, "Jesse, Jesse," simply amounts to fair comment as to the chaos and horror that was going on inside the home and based upon the blood pattern analysis and the DNA results. The State referred to the area where one of the swabs was taken – the same area where Jesse found deceased lying up against the kitchen cabinet. The State reminded the jury that his swab was a mixture of both Jesse and Sophia's DNA and, therefore, likely represented that Sophia must have tried to help her brother before retreating to where she ultimately was found deceased between the first and second floors. While the defense tries to argue that "this inflammatory speculation, unsupported by the testimony, 'had the potential of evoking the jury's sympathy and outrage'" the State's argument was wholly supported by the evidence. Db23 (citing State v. Rodriguez, 365 N.J. Super. 38, 48 (App. Div. 2003)). This argument, however, just completely fails to recognize that the combination of several witnesses and the blood/DNA results clearly supports the State's argument. Fair comment on the evidence of a highly emotional homicide has never, and should not now, be found to warrant the grant of a new trial.

It also cannot go unsaid that the State also told the jury, at least once, that it did not want them to use sympathy to convict – that what happened was horrific – but that it needed to be firmly convinced that Paul Caneiro did this. So, while some degree of emotion was certainly part of the State's summation, it was understated to say the least. Lastly, the State would submit that this fact is further buttressed by the fact that the State's PowerPoint had only two autopsy photos depicting physical injuries. These two photos – a photo which was in evidence of Keith Caneiro, which was

utilized specifically to demonstrate the accuracy of the gunshots to his head (this was also completely in line with the Court's ruling as to the limited use of the weapons "cache") and the second – a significantly redacted photo of Jesse Caneiro's chin used to discuss the fact that it was likely a gunshot injury and a projectile was found in close proximity to him in the kitchen. The State lastly reminds this Court that the autopsy photos were both limited and heavily redacted and these two photos were just a miniscule portion of what was in evidence for the jury's consideration.

The defendant also attempts to allege that the State invoked references to God to somehow inflame the jury. This could not be further from reality. The State acknowledges use of the word God on several occasions, but not in manner prohibited by any caselaw. Again, there were no objections to any of the four references pointed out in defendant's brief strongly suggesting that these references were not considered objectionable at the time and, therefore, should not be found so now. Db24. It should be noted that defendant cites no law indicating that what was said was in any way improper; however, the State would submit that the law would clearly indicate that these statements were merely figures of speech and/or simply colloquial expressions which were clearly not designed to in any way invoke God. See Choi v. Warren, 2015 U.S. Dist. LEXIS 85843 (2015)(indicating that the prosecutor's use of "thank God" was not improper given that that "common sense suggests that this is a routine figure of speech, not an attempt to invoke the jurors' religious beliefs or awaken sectarian prejudices."); United States v. Marron, 658 Fed. Appx 692 (2016)(holding that the prosecutor quote that "the greatest trick the devil ever pulled is convincing the world that he didn't exist" were "not an invocation of religion or a personal attack on defense counsel."); Reed v. Graham, 2017 U.S. Dist. LEXIS 74385 (2017) (holding that prosecutor's statement, "How in God's name does Ronnie Parnell know…" "did not inject religion into the

jury's deliberative process" and was simply "one colloquial reference.). Given the state of the law, the fact that these were simply colloquial references and the fact that the defense did not object clearly reveals that these statements were not improper or, in any way, prejudicial to the defendant.

The defense also claims that the State improperly told the jury during summation that it does not tell witnesses what to say. The context of this complained-about-only-now argument was discussing the testimony of Heather Capp and Jonathan Harrington. The State would first note that the defense, despite not mentioning it in its brief, spent a lot of time arguing that Capp's and Harrington's testimony meant that two people committed this crime and that, presumably, Paul Caneiro was not one of them. This includes, by the State's count, seven PowerPoint slides of the defense's summation. The defense complains about the following:

> "It's been argued extensively this morning and in the past that we ignored Heather Capp and we ignored Jonathan Harrington's information – you know, the 4:30 thing. I want to say, first thing's first: we don't tell people what to say. We don't try to change times…
>
> "But we know based upon the investigation, it wasn't like it wasn't challenged or investigated, but we know that Heather Capp and Jonathan Harrington saw the first responders because we know what time the fire started… so that point, ladies and gentleman, I suspect that's not something that was ignored. It wasn't ignored. And also, is not something where we told people what to say or to change their story, because that's not the way these things work."

The State would initially note that the defense summation understandably attempted to utilize the testimony of these two witnesses to show that someone else set fire to defendant's home and, therefore, that other person was likely guilty of the crimes in Colts Neck. Similar to significant references to Corey Caneiro in summation, the defense again attempted to paint this as a failure to investigate alternate theories, when in reality it was really a third party guilt argument. The State respected the argument; however, had an obligation to respond and was allowed to do so. In doing

so, the State rightfully utilized all of the relevant evidence to show that Capp and Harrington were wrong about their times. In doing so, the State rightfully pointed out that no one ever attempted to convince these witnesses that their times were wrong; instead the State simply pointed out that, objectively, the detectives and the State determined via a significant investigation that the witnesses were simply incorrect about their times. The State, utilizing facts in evidence, argued that the witnesses saw first responders and not two "mystery men." This was done by pointing out that the evidence proved that the fire started at approximately 4:57 a.m. and that Heather Capp's statement and testimony included that her first observations were made in conjunction with her also seeing fire in the rear of 27 Tilton Drive.

That being said the State was well within its province to argue that it did not attempt to change her version of events in any way. This is exactly the opposite of the defense reliance on State v. Sherzer, 301 N.J. Super. 363, 445 (App. Div. 1997), which was cited to for the proposition that "a prosecutor may argue that a witness is credible but may not personally vouch for the credibility of a State witness or suggest that the witness' testimony has been 'checked out.'" The defense also attempts to make an attenuated argument that, by virtue of the State indicating that it does not tell witnesses what to say, that somehow that means that the defense does – presumably because the State made references to the "convenient" testimony of defense witnesses. While the State is not certain which words it used describing some defense witnesses, it does appear that the State used the word "convenient" while referencing the testimony that there was some degree of soundproofing in defendant's home. That being said, the State would argue now that the testimony did appear to be both "convenient" and "consistent" amongst defense witnesses. The State submits that either characterization was not improper based upon the totality of the defense testimony and would submit that it would appear that the jury recognized this as well. Regardless, the State never

equated it's commentary regarding Capp or Harrington with that of the defense witnesses as defendant now claims. The State's reference to not telling its witnesses what to say was properly used to negate or rebut the defense argument regarding third-party guilt and that the State did not need to attempt to change witnesses accounts because the facts revealed the reality of what happened – FF Chris Sorrentino was at the front door and the person holding the flashlight was one of the Ocean police officers. Finally, the State would note that, again, the defense did not object to any of this during the summation.

iii. THE STATE DID NOT CAST UNJUST ASPERSIONS AND DENIGRATE THE DEFENSE DURING SUMMATION

In this section of the defense brief, they argue that the State cast improper aspersions on the defense. As in other portions of the brief, they never quote what they said in summation, yet point to numerous alleged improprieties in the State's summation. The State submits that this is important given the fact that a prosecutor is "expected to make a vigorous and forceful" argument to the jury and accorded greater than normal latitude to rebut the defense summation. See Frost, 158 N.J. at 8, 84-86. As a starting point, while defendant points out many alleged instances of misconduct in this section, there was only one objection – interestingly, to a compliment from the State that "she was doing her job." Given the lengthy summation from the defense, the State at times needed to respond to many arguments made therein. The State did so with proper comments and arguments which, at times, corrected the reality of what the evidence actually showed. This also included properly highlighting when the State felt that defense arguments made no sense. The State submits that it did its job within the confines of its obligations and the law. The State never denigrated the defense or the defendant with personal attacks; it simply pointed out when their arguments were not supported by the evidence or, in its opinion, based in reality.

The defense makes many arguments in this section. The State will attempt to summarize and respond accordingly. This starts with the alleged impropriety of the State's comments that "I'm a little sick of hearing about two people," I'm a little sick of hearing about Corey Caneiro." There is nothing improper about these statements given the fact that there was absolutely no evidence that connected Corey Caneiro to the events of November 20, 2018. While, at most, rhetorical excess and certainly not warranting of a new trial, the State believed that it was well within its province to point out that the evidence was overwhelming against Paul Caneiro and that he had no choice but to find someone to point the finger at and -- at some point -- someone chose Corey, likely because he was the other contingent beneficiary. That was all that the defense had. To argue that anyone could simply point the finger and say "Corey did it" is not improper based upon the need to respond to the defense and show that this absolutely did not create reasonable doubt as to the defendant's guilt, which is the standard with a third-party guilt defense. To argue now, without previous objection, that this is untrue because there is a threshold that must be met prior to invoking this defense holds little merit as the State believes that a Court cannot stop a defendant from blaming someone else. This is why the State never argued that the defense could not raise a third-party guilt defense.

A defendant has a constitutional right to present a complete defense, including the "right to introduce evidence of third-party guilt." State v. Cope, 224 N.J. 530, 551 (2016) (quoting State v. Cotto, 182 N.J. 316, 332 (2005)). Third-party guilt evidence is admissible so long as "the proof offered has a rational tendency to engender a reasonable doubt with respect to an essential feature of the State's case." State v. Perry, 225 N.J. 222, 238 (2016) (quoting Cotto, 182 N.J. at 332); see State v. Fortin, 178 N.J. 540, 591 (2004); State v. Sturdivant, 31 N.J. 165, 179 (1959).

So, while there may be a low threshold to be meet in order to raise a third-party guilt defense, the State can certainly argue that anyone can point the finger because, in reality, that is true.

Assuming arguendo that there is a low threshold that needs to be met, it is fair comment for the State to assert that the blaming of Corey Caneiro or anyone else is not based in fact. Here, the defendant could reasonably assert that he had the same motive as Corey Caneiro – whether he knew it or not. They did. While defendant argues that the defense only argued a "failure to investigate" – they were hoping that this jury would be skeptical of Corey enough to feel that there was reasonable doubt as to defendant's guilt. The State used facts and evidence to show that everything pointed to Paul Caneiro and, therefore, the defense had no other defense but to insinuate that the "third brother" may have set him up. This argument was central to the defense opening statement. Therefore, the State's comments were not designed to denigrate anyone nor to shift the burden, but instead just simply to point out that pointing the finger was just an attempt to distract the jury from all the evidence against Paul Caneiro. It was fair comment based upon the evidence.

Defendant next argues that the State insinuated that the defense hid information. This was never the point of the State's argument. The defense points to several out-of-context individual sentences. These are as follows:

- "I'm a little sick of hearing about 2 people – which is, for the first time today."
- "We heard for the first time today, that it was actually him in that garage shutting [the cameras] off."
- "And again, today, you heard Ms. Mastellone say that that was Mr. Caneiro in the garage shutting off his cameras, but that's not something that's ever been acknowledged. You didn't hear the detectives testify that it was Paul Caneiro shutting off his cameras."

- "All of a sudden now it's like, ok it is the Macan, we just can't prove to you who's in it."

- "You heard about the soundproofing. I've never heard that before, but you heard it. I guess there were some soundproof rooms. That's convenient now, but it is what it is."

From a practical perspective, everything the State said above was true. The State was not saying that these things needed to be disclosed, but that they were convenient ways to tailor a defense to fit the evidence adduced at trial. The defense has the right to argue these things in support of their narrative of what the evidence showed or did not show. That is their right. On the flip side, New Jersey law grants the State the right to respond to defense arguments and point out what the evidence did actually show, or not show. This was not in contravention of defendant's Fifth Amendment rights. Also, the State submits that it spent a lot of time responding to the defense's argument that the investigators had "tunnel vision" with respect to Paul Caneiro. The State responded throughout the summation to show that investigations are a process and that each piece of evidence that was uncovered along the way pointed to the defendant and no one else. This is entirely proper and necessitated the State arguing that certain things (like the fact that it was actually the Macan or it is him on the video) were not always so simple or a given. This was fair comment and, again, was not subject to any objections.

Next, the defense argues that the State's arguments that we heard certain things for the first time was improper because the defense was under no obligation to assert third-party guilt, like with certain affirmative defenses. The State does not disagree. The defense takes this a step further and argues that "the State was put on notice of the Corey Caneiro third-party guilt defense back in 2019 by prior counsel…" Other than a passing comment by prior counsel in chambers when he was attempting to get out of the case, the State is not aware of any such

"notice," not to mention that prior counsel essentially said that there was a conflict due to a previous representation of Corey Caneiro that would cause issues were he to have to cross-examine him. In reality, the closest that the defense came to notice (albeit not necessary) was during the Daubert hearing when there was testimony about relatives sharing DNA and insinuations made with that argument. That being said, the State dealt with the insinuation of Corey's involvement head-on and showed how impossible it would have been for Corey to set the defendant up – given all that he would have had to do to get into defendant's house, car, locked gun locker, etc. Clearly, the jury understood that was not plausible and unsupported by the evidence.

Along these same lines, the defense claims that the State improperly commented on hearing about the "two-person" defense for the first time. It leaves out the fact that it is wholly responsive to their opening statement where they appeared to be fixated on the "third brother." It was not designed to insinuate they were "playing dirty" or failing to comply with a discovery obligation it does not have. The State's retort was simply pointing out that defendant's proffered defense did not amount to reasonable doubt. This argument is proper, it is supported by the evidence heard during trial and was not objected to. The State must be able to respond to a lengthy and detailed argument that was made for the first time in a defense summation.

While it was stated earlier, the State was not denigrating the defense when it pointed out that Ms. Mastellone was "doing her job." It was the opposite -- the State actually said in response to this objection that "it was a compliment." This shot at the State is again thrown now without context. To provide context, this portion of the argument on Day 18 begins at approximately 5:40:30 and surrounds the defense summation/cross-examinations wherein it was argued that the State did not do certain things – why didn't they look into Corey, why didn't they

follow the money? The State here (and elsewhere) responded to this by indicating that the defense spent significant time trying to show defendant did not shut off the DVR or that the DNA was transferred, etc. The State then indicated that we understood the defense – almost appreciated the attempt, but that it simply was an acknowledgement that the totality of the evidence was extremely indicative of defendant's guilt. Just after saying, "and I get it, I get it, she's doing her job," the State responded to the defense seminal point from it's opening about why would Paul Caneiro do all this, but set a fire at his home and lead them to the evidence?" It is likely the best argument that could have been made in light of the evidence, therefore, after "she's doing her job," the State continued by pointing out that this argument was made by counsel, but that the reality is that he did not lead police to the evidence, "he tried to destroy it." This highlights, first, context and, second, that the State is wholly entitled to respond to the defense summations. In this regard, the State would submit that the defense brief almost entirely fails to put any of the aggrieved statements in context. The reality is that the State, at times, was simply responding to defendant's own argument while concurrently making clear that it had proved the case beyond a reasonable doubt. There is nothing improper with this type of response to a defense argument.

The defense then argues that the State mischaracterized the defense argument that Keith, not Paul, was stressed about money in November 2018, because unlike Paul, Keith did not have significant disability income to fall back on. The State said:

> "And it's almost like, are we criticizing Keith because he didn't have disability to fall back on? Like, does that make him a bad guy? Like, everybody should have disability and still be able to work at the family business?... Keith doesn't have that fall back, right? Paul has disability, right? That's what they're arguing to you."

The defense leaves out how they incorrectly, in their summation, attempted to show that Paul's finances were stable at the time of these murders. This was incorrect. In context, the State utilized the exhibit, S-40(a) and/or (b), a summary of defendant's income and obligations to show that the defense was failing to acknowledge the significant credit card expenditures and expenditures at Tiffany and Restoration Hardware.

As far as the mischaracterization argument goes, the State is still confused in this regard. It believes the defense argued that Keith did not have the disability crutch that Paul had. This was true. The State essentially juxtaposed the two different ways that Keith and Paul planned for the future. Keith had an MBA, was looking for jobs, etc., while Paul simply supplemented his income by taking from his brother's Trust. The point was that Paul's finances were not stable and, by virtue of his disability, he would not have been able to obtain other employment. While the State would agree that Keith "was stressed" and maybe Paul was not – this was true only until Paul realized that Keith knew that he stole money again. This led to Paul Caneiro committing these crimes hours after his brother confronted him. The State did not argue that the defense was villainizing the victim, just that they were downplaying the reality of Paul Caneiro financial status and forgetting that, no matter how much Paul received in disability, it would not have been enough to support his lavish lifestyle. These arguments by the State were based on the evidence and also responsive to the defense's summation. Finally, there was no objection.

iv. THE STATE DID NOT IMPROPERLY OPINE ON THE DEFENDANT'S STATE OF MIND WITHOUT EVIDENCE TO SUPPORT IT

Defendant argues that the State improperly opined on the defendant's state of mind. The State wholly disagrees and reminds this Court of a seminal principle: state of mind, and more

specifically that purpose and knowledge, cannot be seen or heard and can only be determined by inferences from conduct, words or acts. With this in mind, the State would merely point to the Model Jury Charge, specifically the section defining Murder (Counts 1-4), which stated:

> Purpose and knowledge are conditions of the mind which cannot be seen and can only be determined by inferences from conduct, words or acts. It is not necessary for the State to produce a witness or witnesses who could testify that the defendant stated, for example, that his purpose was to cause death or serious bodily injury resulting in death; or that he knew that his conduct would cause death or serious bodily injury resulting in death. It is within your power to find that proof of purpose or knowledge has been furnished beyond a reasonable doubt by inferences which may arise from the nature of the acts and the surrounding circumstances. Such things as the place where the acts occurred, the weapon used, the location, number and nature of wounds inflicted, and all that was done or said by the defendant preceding, connected with, and immediately succeeding the events leading to the death of per Count One Keith Caneiro; per Count Two Jennifer Caneiro; per Count Three Jesse Caneiro; per Count Four Sophia Caneiro are among the circumstances to be considered.

Having that in mind, the State submits that any reference to defendant's state of mind made was supported by the evidence. Defendant argues that the state was offering an "unqualified expert opinion" regarding human behavior and the effects that committing crimes would "have to have" on a person by virtue of the following comments:

- "The problem with murder, especially when you kill your niece and your nephew, is that no matter how ruthless the crime is or your intent is, you still never know how you're going to react after something like that. I mean, none of us know. And he just annihilated his nephew and his niece."
- "[It's] because of what he just did. And the effect, no matter what you think of Mr. Caneiro, the effect that what he did to those little kids had to have had on him. Had to have."

- "And, he's driving home… And he's got that voice in his head, right? He's thinking about that special bond with Jesse. He's thinking about God what I just did to my niece."

The above comments, again out of context and, again, not objected to, have nothing to do with expert opinions. The State is commenting on what it believes would have to have been going through the defendant's head after just committing these violent crimes against his family. This is entirely fair comment based upon the nature of the acts and the surrounding circumstances. This time, however, the defendant does put these comments in context by pointing out that the State is arguing that defendant, portrayed as a smart, calm, family man, was sloppy after committing these crimes. This was in direct response to the argument the State mentioned before wherein the defense centered its defense on the fact that it does not make sense that defendant would do this then lead the police to all of the evidence in his home when he lit the fire. This is absolutely proper in response to that argument. The State utilized the evidence, notably the brutality of these crimes and the sharp force injuries which were testified to by Drs. Lauren Thoma and Alex Zhang to paint a picture that shooting and brutally stabbing your family, including your niece and nephew (particularly in light of the "special bond" testimony from defense witnesses), had to have affected defendant as he drove home and then set fire to his own home. This is not expert testimony it is simply fair comment based upon the evidence. The defendant's citation to State v. Atwater, 400 N.J. Super. 319, 337 (App. Div. 2008), a case where there the appellate court stated that there was "no evidence whatsoever that defendant acted intentionally" has no bearing on these facts. Defendant's intent to kill and his intent to cover it up, albeit poorly, were completely evident based upon the evidence.

The State is perplexed as to how these comments are "prejudicial because they highlight the fact that the defendant never testified." The State's comments have nothing to do with

defendant's right to or election not to testify. As specified in the jury charge, in several parts, state of mind can only be determined by inferences from conduct, words or acts; therefore, the State's comments regarding how the defendant would have reacted based upon all of the evidence is fair comment, especially given the fact that the State had to prove defendant's state of mind for each and every count of the indictment.

The State would again point the Court to the Model Jury Charge in its response to the next argument – that the prosecutor "inserted unsupported speculation of how the defendant felt about his brother, Keith." They further indicate that "several witnesses… testified to the fact that the defendant loved his brother very much and would do anything for him." In addition to arguing that the jury probably felt this was overdramatic, the State would note that this testimony was completely contrasted by the evidence in the case which proved beyond a reasonable doubt that defendant killed his brother. The State's comments, "I think that [Paul] feels underappreciated" and "Paul's sick of having to deal with, in his mind, this BS from Keith" were completely supported by evidence in this case, including emails, messages and other testimony. The defense indicates that these statements "undermined the defense that Paul would never murder his brother and family, whom he loved wholeheartedly." The State submits that these statements, in conjunction with the surrounding arguments (i.e., context), were designed to undermine the defense that Paul would never kill his family. That is the State's job – because the State had to prove beyond a reasonable doubt that he killed his family. It was not improper, was fair comment based upon the evidence and was not objected to.

v. THE STATE DID NOT ARGUE FACTS NOT IN EVIDENCE

The State understands that it must argue based upon facts in the record; however, this also includes reasonable inferences from these facts and the evidence contained in the record.

The defense argues that "a few statements stand out as particularly prejudicial." Db34. First, they point out that they argued a two-person perpetrator theory and in support of that proposition they argued that there were two pairs of jeans as opposed to one. The State continues to disagree – and did say "they saw that they were one pair of jeans." Here, the defense references the video from Day 19 at 1:37:21. Looking at the context of this, the State is referencing a photo of the jeans laid out on brown paper and is talking about the item of evidence, S-232, which the State argued was one pair of jeans. In furtherance of that, the State responded, explained and even showed to the jury the tearing on the rear of the jeans which, it submitted, showed a separation of a portion of the jeans, essentially that part of the jeans was missing – this portion allowed the defense to argue that there was a second pair of jeans. The State then notes that the evidence "was sent to the State Police… and "that they saw them" and that "they didn't say these were a different set of jeans – let's test them… they saw that they were a different pair of jeans." The State submits that it gave the jury the opportunity to see the evidence – the State specifically pointed out that the "second" pair was clearly the separated portion of the larger item. The jury was given the opportunity, both as the State was displaying S-232, in conjunction with the picture on the screen, and during its deliberations, to scrutinize this evidence and make up their own mind. Given this fact, in conjunction with the State's proper description of the evidence, the State submits that this was fair comment regarding this evidence regardless of why the second portion was not tested. Lastly, the defense did not object.

Also, regarding DNA evidence, the defense argues that the State misled the jury when it noted, "you can't swab every single place where there is blood. State police, I think you heard, they're not going to test it all – that's for sure." Db35. Despite the defense arguments that this was not the testimony, the State would simply point to the paragraph before where the defense

cites to NJSP Serologist Allison Lane's testimony: "The laboratory does the analysis for the entire State of New Jersey, so we employ case management and not every item in a case can get analyzed at a given time. We know we can always go back and do more analysis if deemed necessary." Db35. This contradicts the defense's argument criticizing the State for arguing that the State Police was not going to test an unlimited number of swabs from the kitchen. The reality was that there were four swabs taken from different areas in the kitchen, leading to the identification of blood from Jesse and Sophia Caneiro. It must be noted that the State's whole line of argument, referenced earlier, was regarding the kitchen and was partially responding to what the State felt was an inaccurate portrayal of that area being a bloody mess, or words to that effect. In actuality, the jury saw the pictures and heard the testimony of Detective Cordoma, and would have realized that there was blood present but that the kitchen was not, in any way, fully saturated in blood. The State is simply responding to arguments made by the defense that the State could or should have tested more areas despite the fact that all four blood saturated areas revealed the DNA of Jesse and Sophia Caneiro.

Next, the State is being criticized for its theory regarding the scarf and how it likely was wrapped around the knife while defendant stabbed Sophia Caneiro. This, the State submits, was fair comment and a reasonable inference from the evidence at trial. Specifically, the testimony revealed Sophia Caneiro's hair on the scarf, Sophia Caneiro's blood on the knife found inside the foyer, Sophia and Paul Caneiro's DNA on black nitrile gloves and slits or defects on areas of the scarf. This evidence adduced at trial certainly gave the State the factual basis to argue that the defendant's Brooks Brother's scarf was wrapped around his hand/that knife as he was inflicting the 17 sharp force injuries that Dr. Zhang testified to at trial. Thus, this is fair comment. The defense did not object.

Next, the defense argues that the State's comments surrounding Paul Caneiro likely using his Laserlyte Training system before the murders is also a fair comment based upon the evidence. The testimony revealed that defendant was in his room all night, at least until his daughters and wife went to bed. This is the period of time after the phone call where Keith accused Paul of stealing. It is the time period before he plugs in his phone, shuts off the DVR and shuts off the basement cameras. In that room, Lt. Cattelona located a Sig Sauer (not the Sig Sauer linked to the murders) and a Laserlyte Training target. When that Sig Sauer was sent to the New Jersey State Police Ballistics unit for testing, SFC Chris Clayton inspected it and found a laser site bore in the chamber. The testimony revealed that this is a laser site designed for training and can be used in conjunction with the target found on the bedroom floor. Given the evidence and the reasonable inferences therefrom, it was completely reasonable for the State to argue that defendant could have been using the firearm and the laser site to practice dry firing the weapon before he shot his brother multiple times in Colts Neck. This amounts to a reasonable inference based upon the testimony adduced at trial, in conjunction with the evidence itself. Additionally, the State would note that the defense did not object.

Finally, the defense argued that the defendant could not have started the small fire by the garage. The State properly commented on the evidence relating to this chain of events. Specifically, the State produced video which the jury viewed, which it argued showed some movement in that area just prior to the quick spread of fire near the Porsche Macan. This was approximately one minute after defendant pulled the Porsche Cayenne from the garage. The State argued that the defendant easily could have left his car parked on Tilton Drive and returned to the area where the small fire started. The State submits that this argument was supported by the video. To this end, the State also argued that the defense's theory was unsupported given

that they argued that Capp and Harrington saw people on scene at 4:30 a.m. and that they could have set both fires. The State pointed out that it made little sense that someone who set a fire at 4:30 would still be on scene setting a second fire approximately 31 minutes later and even after Paul Caneiro and family had exited the residence. The State again submits that its argument was a reasonable inference from the evidence and, thus, was supported by the record. Again, there was no objection.

The State would submit that the State is entitled to make vigorous arguments in summation. It believes that it did so. The State had the burden to prove this case beyond a reasonable doubt and therefore had to address the evidence adduced at trial and reasonable inferences that could be drawn from that evidence. Given the length of trial and of the defense's summation, the State also had to respond to many arguments made by the defense. In doing so, there were times that the State was forced to explain how arguments were unsupported by the evidence that was presented. The State never denigrated the defense – it simply responded and explained how the evidence proved defendant's guilt. Commenting on the evidence and defendant's summation is not, and never has been, prosecutorial misconduct in New Jersey. The State would note that the defense's brief in support of this motion for a new trial criticizes numerous comments made by the State; however, most of the time these citations lack any context. Additionally, the State barely discusses the extent of arguments it made and ignores that many of these comments are responsive to arguments made by the defense.

It should also be noted that, with few exceptions, the defense did not object to the comments with which they now complain. This is telling. New Jersey law is clear that "a failure to object not only signifies that the remarks were not considered prejudicial at the time made, but

also deprives the Court of the opportunity to take curative action. Frost, 158 N.J. at 83-84. Under this high threshold, there is absolutely no basis for this Court to grant a new trial.

Finally, the State submits that the evidence of defendant's guilt was overwhelming. The jury deliberated for, likely, around three hours despite this being a seven week trial with approximately a day and a half of summations. Clearly, the jury was convinced beyond a reasonable doubt that defendant, and no one else, committed these crimes. The defense arguments that the State's summation deprived the defendant of a fair trial lack any merit and this motion should be denied.

POINT III

THE COURT'S "REQUEST FOR EX-PARTE LETTERS" IN NO WAY PREJUDICED THE DEFENSE

Defendant argues that, "months prior to trial, the Court suggested during an off-the-record conference with all parties present that the defense provide the Court with an ex-parte letter regarding its defense and, more specifically, regarding Corey Caneiro." Db39-40. Defendant continues that, "[t]he Court evidently extended this suggestion to the State as well, although this was not clear to the defense at the time of the conference." Db40. The State submits that these statements and the arguments in defendant's brief are made, again, out of context. Based upon the State's clear recollection of the conversation between the Court and all counsel, the Court had stated, as it had on many prior occasions, both on and off the record, that it simply did not want to be surprised and left to make important evidentiary rulings while a witness was testifying in front of the jury.

Specifically, based upon the State's recollection, this matter was scheduled for a status conference/pre-trial conference on December 5, 2025, approximately one-month before jury

selection was set to commence. During the in-chambers portion of that conference, the Court again commented on how it preferred to be prepared when making complicated evidentiary rulings. The Court commented on how it was extremely understanding that the defendant did not have to reveal its strategy to the State in advance and, therefore, offered to accept a submission from the defense "without providing it to the State," or words to that effect. The Court then followed by indicating that the State could do so in a similar fashion if it so chose.

Given this conference, the State ultimately chose to submit a letter to the Court regarding what it anticipated might be proffered by defendant via cross-examination. This letter was given to one of the Court's law clerks on January 5, 2026. According to the defendant's submission, "the defense elected not to provide an ex-parte letter ahead of trial." Db40. Ultimately, however, as set forth in defendant's brief, the defense did provide a letter to the Court on January 19, 2026. Db42.

Defendant now argues that it did not learn until January 20, 2026 that the State had submitted an ex-parte letter "back in December 2025." Db42. While this is mostly true, as stated above, the State provided its letter on January 5, 2026. The State submits that it simply listened to the Court's offer to accept something in advance of complicated evidentiary rulings. While the defendant did not do so until January 19, this fact is wholly irrelevant in light of the fact that, before the Court made any evidentiary rulings regarding the admissibility of evidence relating to Corey Caneiro and/or Elisa Bertocci, it had a submission from the defense.

Importantly, defendant acknowledges that on Friday, January 23, 2026, the Court held a conference regarding issues relating to the potential testimony of Corey Caneiro. Db43. By this time, the Court now had ample opportunity to review the submissions from both sides. Also, both sides had extensive opportunity to be heard. Then, on January 27, the Court issued a 49

page Order and Opinion addressing the issues related to Corey Caneiro. Within that opinion, the Court indicated what information was relevant and admissible -- and which was not.

Defendant now argues that the "prejudice to the defendant is the Court's interference in this case." Db43. The State fails to see how this argument holds any weight, particularly due to the fact that it is the Court's function to make evidentiary rulings regarding whether evidence is relevant, irrelevant, probative, unduly prejudicial and, ultimately, admissible. This is simply what this Court did. Seemingly, the defendant complains that the Court had the necessary information it needed in order to actually make these complicated rulings. Defendant argues that the "Court began making evidentiary rulings based on information that was incomplete and one-sided." Db44. This is simply untrue given the Court's extensive rulings – some favorable to the defendant – the Court made on January 27, 2026.

The State submits that both parties were given an opportunity to provide simple guidance to the Court regarding issues that it believed may arise. The State was not made privy to the defense's ultimate submission until the defense chose to append it to the brief in support of this motion for a new trial. The State, therefore, was not armed with a roadmap to the defense strategy. As such, the State submits that the Court did nothing improper and the defendant was in no way prejudiced by the procedure undertaken. Both parties were ultimately guided by the Court's rulings and made strategic decisions thereafter. The State would also note that it was forced to deal with a bevy of complicated motions starting around April, 2026 until the timeframe leading up to the proposed trial date of September 8, 2025. The State notes this due to the fact that it argued before this Court that certain evidentiary rulings the Court was forced to make on January 27, 2026, should have been the subject of motions filed by the defendant.

While the Court did not fully agree with the State in every context, the Court did note on page 14 of 42 of its January 27, 2026 decision that, "[h]owever, as a general principle, a trial court retains the discretion, in appropriate cases, to rule on the admissibility of evidence pre-trial." (emphasis in original) (citing Hawthorne, 49 N.J. at 142). The State would submit that a review of the Court's 42 page opinion leads to the simple conclusion that it would have been next to impossible for this Court to have accurately made these rulings during the course of a witnesses testimony. While the Court's opinion granted a good deal of latitude to the defense in that ruling, the State would note that many pieces of information were ruled inadmissible. The State is uncertain how many inadmissible bells would have been rung in the presence of the jury had the Court not appropriately ruled in advance outside the presence of the jury.

Finally, the State would simply note that the defense was extremely clear that they did not want to call Corey Caneiro as a witness even after the State indicated it was not calling him. That was a strategic decision that defendant made. That was their strategic decision -- this Court simply cannot be blamed that it foreclosed defendant's ability to get some of the information discussed in the Court's opinion before this jury.

POINT IV

THERE IS NO CUMULATIVE ERROR WARRANTING A NEW TRIAL

Defendant argues that cumulative error in the present case warrants a new trial. Db45-46. "[I]ncidental legal errors" necessarily "creep into" proceedings. State v. Orecchio, 16 N.J. 125, 129 (1954); see also State v. Marshall, 123 N.J. 1, 169 (1991), cert. denied, 507 U.S. 929 (1993); State v. Butler, ___ N.J. ___ (2026). Where they do so in a manner that does "not prejudice the rights of the accused or make the proceedings unfair," "an otherwise valid conviction" will not

be disturbed. Ibid. Only where "the legal errors are of such magnitude as to prejudice the defendant's rights or, in their aggregate have rendered the [proceedings] unfair," do "fundamental constitutional concepts dictate" the grant of relief. Ibid.

Despite having failed to establish that any reversible error exists which would warrant a new trial, see POINT I, through POINT III, supra, defendant argues this Court should aggregate these non-reversible errors into a cumulative effect that together render his conviction reversible. There is no basis in law or fact to do as defendant requests. The individual alleged errors complained of by the defendant do not alone rise to the level of reversible error, and for that reason, cannot and should not be aggregated to cumulative error warranting reversal of defendant's conviction.

POINT V

THE JURY'S VERDICTS AS TO COUNTS 13 AND 14 ARE SUPPORTED BY THE EVIDENCE

A jury verdict shall not be set aside "as against the weight of the evidence unless, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a manifest denial of justice under the law." R. 3:20-1; see Dolson v. Anastasia, 55 N.J. 2, 6 (1969) (the object of a new trial motion is to "correct clear error or mistake by the jury"); Reyes, 50 N.J. at 464 (a jury verdict shall not be set aside unless it clearly and convincingly appears that the verdict was the result of mistake, partiality, prejudice, or passion). The trial court is directed to evaluate the "tangible factors relative to the proofs" and the "intangible 'feel of the case . . . '" Ibid. If a fact issue exists from which the jury could find the defendant committed the crime, the application must be denied. State v. Franklin, 52 N.J. 386, 406 (1968).

Courts are instructed to "sift through the evidence 'to determine whether a trier of fact could rationally have found beyond a reasonable doubt that the essential elements of the crime were not present." State v. Smith, 262 N.J. Super. 487, 512 (App. Div. 1993) (citation omitted). Courts are cautioned, however, not to disturb a jury's verdict "merely because it might have found otherwise upon the same evidence." State v. Johnson, 203 N.J. Super. 127, 134 (App. Div.), certif. denied, 102 N.J. 312 (1985). The court must give due regard to the jury's assessment of witnesses' credibility based on its opportunity to have heard live testimony and to have gained a "feel for the case." Ibid. The prevailing party at trial is entitled to the benefit of all reasonable inferences from the proofs, and if reasonable minds could differ, the verdict must stand. Doe v. Arts, 360 N.J. Super. 492, 503 (App. Div. 2003).

Where the jury's verdict is grounded on its assessment of witness' credibility, a reviewing court may not intercede, absent clear evidence on the face of the record that the jury was mistaken or prejudiced. Smith, 262 N.J. Super. at 512 (citation omitted). Thus, where there is ample evidence of the requisites of the charged offense and the jury need not believe every statement of the witnesses to convict the defendant, a motion for new trial based on the contention that the jury verdict was against the weight of the evidence is properly denied. Reyes, 50 N.J. at 464. See State v. DiFerdinando, 345 N.J. Super. 382, 399 (App. Div.), certif. denied, 171 N.J. 338 (2002).

Credibility is a jury question when people "of reason and fairness may entertain differing views as to the truth of testimony." Johnson v. Salem Corp., 97 N.J. 78, 92-93 (1984); Doe, 360 N.J. Super. at 503. See Smith, 262 N.J. Super. at 513 (citing State v. Pickett, 241 N.J. Super. 259, 266 (App. Div. 1990)). Resolution of doubts and disputes arising from conflicting evidence is for the jury and is a function that cannot be legitimately discharged by an appellate court on review. Lewis v. Read, 80 N.J. Super. 148, 171-72 (App. Div. 1963).

On February 12, 2026, during the final jury charge, this Court properly instructed the jury

as to the law on Counts 13 (Theft)[4] and 14 (Misapplication of Entrusted Property)[5]. With respect to Count 13, Theft, the Court instructed the jury as to the elements of the charge: that the defendant 1) knowingly took, or exercised unlawful control, over moveable property; 2) that the moveable property was property of another; and 3) that the defendant's purpose was to deprive the other person of the moveable property. The Court explained that the word "deprive," for purposes of the Theft statute, means to 1) withhold or cause to be withheld property of another permanently or for so extended a period as to deprive a substantial portion of its economic value or with purpose to restore only upon payment of reward or other compensation, or 2) to dispose or cause disposal of the property so as to make it unlikely that the owner will recover it. The Court instructed that in addition to proving each of the aforementioned elements beyond a reasonable doubt, the State must also prove beyond a reasonable doubt the value of the property taken. The Court explained that sums of money alleged to have been taken on different dates could be added together.

With respect to Count 14, Misapplication of Entrusted Property, the Court instructed the jury that the State must prove the following six elements of the crime beyond a reasonable doubt. 1) The defendant knowingly applied or disposed of property; 2) the property at issue was entrusted to the defendant as a fiduciary; 3) the defendant's application or disposition of the property was unlawful; 4) the defendant's application or disposition involved substantial risk of loss or detriment to the owner of the property or to a person for who's benefit the property was entrusted; 5) the defendant knew that his conduct was unlawful; and 6) the defendant knew that his conduct involved a substantial risk of loss or detriment to the owner of the property or to the person for who's benefit the property was entrusted. The Court explained that if the jury found defendant guilty beyond a reasonable doubt, then it must proceed to make two additional

[4] Court Smart Trial Day 19 – 2/12/26 – PM 2:01:23 to 2:08:17
[5] Court Smart Trial Day 19 – 2/12/26 – PM 2:08:17 to 2:18:55

findings: 1) whether the jury finds beyond a reasonable doubt that the defendant derived a benefit from his misapplication of entrusted property and, if so, 2) the benefit he derived. The Court explained that the benefit derived includes the value of all funds or property misapplied by the defendant—that is, the value of the property misapplied is not simply the value of its use during the period in which defendant exercised control over the property. The Court went on to provide an example: if a defendant applies or disposes of five-thousand dollars, but reimburses the victim for all but two-hundred dollars of the amount, the benefit derived is still five-thousand dollars—the entire amount involved.

The defendant claims that the evidence presented "was not sufficient for a finding that the defendant stole or misappropriated funds in an amount of $75,000 or more" and so argues that the jury's verdict as to Counts 13 and 14 was therefore "against the weight of the evidence." Db47-48. The defendant's argument is without merit. To the contrary, sufficient evidence was presented to support the jury's finding that the defendant knowingly took $75,000 or more from the Keith Caneiro Irrevocable Trust Account (for purposes of Count 13), and that the benefit he derived from his misapplication of entrusted property was $75,000 or more (for purposes of Count 14).

The jury heard testimony from Detective Debra Bassinder, who was qualified as an expert in the field of forensic accounting, that the defendant made 32 transfers from the Keith Caneiro Irrevocable TD Bank Trust Account 5465 into his own personal bank accounts – 3837, 3886 and 3760 – between January 1, 2017 and November 19, 2018, totaling **$78,180**.[6] Same was depicted in State's Exhibits S37 and S38.[7] The $78,180 value was further summarized in State's Exhibit S40a[8]. For purposes of transparency and completeness, the State elicited testimony from

[6] Court Smart Trial Days 2 and 3.
[7] 2017 (S37) and 2018 (S38) TD Bank statements of the Keith Caneiro Irrevocable Trust account ending in 5465 depicting all transfers from this account into the defendant's personal bank accounts.
[8] Summary chart of defendant's sources of revenue for the years 2017 and 2018. S40a reflects that defendant received $33,680 in 2017 and $44,500 in 2018 from the Keith Caneiro Irrevocable Trust account for a total of

Detective Bassinder indicating that the defendant made two payments directly to Canada Life in 2017 from his personal TD Bank account ending in 3837, totaling $19,800: $8,000 on July 21, 2017 and $11,800 on August 2, 2017, to be exact. However, the fact that such evidence was presented does not negate the jury's findings as to the value of property stolen ($75,000 or more for purposes of Count 13) or as to the value of the benefit derived ($75,000 or more for purposes of Count 14).

For purposes of Count 13, Theft, notwithstanding the two payments defendant made directly to Canada Life in 2017, there is sufficient evidence in the record to support a finding that his purpose, at the time he took money from the Keith Caneiro Irrevocable TD Bank Trust Account, was to deprive the victims' thereof; to withhold such money permanently, regardless of any later motivations he may have had to pay Canada Life directly. This is especially true given the fact that, after August 2, 2017, the defendant took money from the Keith Caneiro Irrevocable Trust Account an additional 24 times.

With respect to Count 14, Misapplication of Entrusted Property, even assuming the $19,800 defendant paid directly to Canada Life in 2017 is considered to have been "paid back," as the Court explained, for purposes of the Misapplication statute, the "benefit derived" includes the value of all funds or property misapplied by the defendant. Here, the evidence presented at trial of the value of all funds misapplied by the defendant was $78,180. Thus, there is sufficient evidence in the record to support a finding that the benefit the defendant derived from his misapplication was $75,000 or more.

$78,180.

CONCLUSION

Based upon the above, the State submits that defendant's motion for a new trial should be denied.

Very truly yours,

RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

s/Christopher J. Decker

By: Christopher J. Decker
Deputy First Assistant Prosecutor

s/Nicole Wallace

By: Nicole Wallace
Assistant Prosecutor